

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII**

In the Matter of the)	PUC DOCKET NO. 2008-0273
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PUBLIC UTILITIES COMMISSION)	
)	
Instituting a Proceeding to)	
Investigate the Implementation Of)	
Feed-in Tariffs)	
_____)	

PUBLIC UTILITIES
COMMISSION

2010 FEB 26 P 11: 21

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**SOPOGY, INC. COMMENTS ON PROPOSED QUEUING AND INTERCONNECTION
PROCEDURES**

AND

CERTIFICATE OF SERVICE

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**SOPOGY, INC. COMMENTS ON PROPOSED QUEUING AND INTERCONNECTION
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SOPOGY, INC., a Delaware corporation (the “**Company**”), respectfully submits this memorandum to the State of Hawaii Public Utilities Commission (the “**Commission**”) pursuant to the Public Utilities Commission of the State of Hawaii’s (the “**Commission**”) Decision and Order, dated September 25, 2009 (the “**D&O**”), and the Commission’s Order Setting Schedule in Docket No. 2008-0273, dated October 29, 2009, directing the parties to the docket to file comments to on Queuing and Interconnection Procedures.

Respectfully submitted.

DATED: Honolulu, Hawaii, February 26, 2010



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COMMENTS ON PROPOSED QUEUING AND INTERCONNECTION PROCEDURES

The Commission issued the D&O governing this phase of the Feed-in-Tariff docket (“**FiT Docket**”). The D&O directed that Hawaiian Electric Company, Inc. (“**HECO**”), Maui Electric Company, Ltd. (“**MECO**”) and Hawaii Electric Light Company, Inc. (“**HELCO**”, and collectively with HECO and MECO, the “**HECO Companies**”), “collaborate with the other parties to draft queuing and interconnection procedures,” *D&O* at 93. The D&O further directed that these procedures “include project development milestones to advance in the queue and deposits for applicants,” and “a mechanism for applicants to apply for extensions for the amount of time needed to meet project development milestones,” *Id.* The D&O further required that the queuing process be overseen by an “independent third party,” *Id.* at 93.

On February 1, 2010, the HECO Companies filed its “Report on Queuing and Interconnection Procedures” which included a proposal for the initial implementation of queuing and interconnection procedures (“**Proposed Q&I Procedures**”), developed by the HECO Companies with the assistance of Merrimack Energy Group, Inc.. Zero Emissions Leasing LLC and Clean Energy Maui LLC also jointly filed proposed queuing and interconnection procedures. The comments below focus primarily on the Proposed Q&I Procedures.

As an initial matter, the Company notes that it is unable to comment specifically on the certain aspects of the queuing and interconnection procedures that were were not fully described or included in the Proposed Q&I Procedures.

1) **Queue Transparency – HECO Website.**

The Proposed Q&I Procedures suggest that the queue be posted on HECO’s website, *Q&I Procedures* at 8. The Company is in agreement with this recommendation as transparency of the queue and queue process are important in enabling project developers to appropriately evaluate the viability of their project(s), gauge the progress of their project(s), determine the likelihood that their prospective project(s) will advance and monitor queue occupation levels (especially in relation to the applicable FiT Program cap), and ensure integrity of the queuing process, in general.

The Company requests, however, that the project and developer information made available on HECO’s website be limited for a number of reasons. Land and other resources are limited in the State of Hawaii. As such, disclosure of certain types of information could cause harm to competitive advantages developers may have with respect to certain parcels of real property or other resources (such as equity investors and/or other financing). Further, due to the sensitive nature of certain prospective project locations, developers and other related parties must

remain in control of the disclosure of project information such that they may address community questions and concerns appropriately. For example, projects on Department of Hawaiian Homelands (“DHHL”) land (such parcels were suggested as prospective sites by the HECO Companies in their Comments on Proposed Tiers 1 and 2 Tariffs) will be of particular interest to certain community groups. Hawaii statutory law requires public hearings with respect to proposed renewable energy projects on DHHL lands. Similarly, certain other parcels with unique environmental attributes may be of particular interest and/or concern certain community groups. Should interested groups learn of prospective projects through HECO’s website without a concurrent opportunity to ask questions or seek further information, needless misunderstandings could result. Therefore, the Company recommends that the information available on HECO’s website regarding proposed projects in the queue be limited to the identity the project developer, size of project, technology type (i.e. PV, CSP, wind or in-line hydro), identification of circuit (to the extent that a specific landowner or parcel is not identified) and general indications of milestone fulfillment. Further, if any of this information proves sensitive in certain cases, there should be a procedure established such that developers may request redaction of said sensitive information.

2) Application

Since the full proposed application form was not included in the Proposed Q&I Procedures, the Company cannot comment on the application form specifics. Exhibit 2 of the Proposed Q&I Procedures, however, sets forth a number of items in response to: “What should constitute a ‘complete’ application.”

With respect to the proposed application requirement of “site control” – which also corresponds to the “ownership or control of the site on which the project is to be constructed” project viability criteria, *Proposed Q&I Procedures* at 8 – the Company notes that such a strict requirement forces developers to incur significant risk and expense for certain larger-sized projects, without any certainty as to whether the project has been accepted into the queue or as to HECO’s assessment of the project’s viability. This not only places a significant financial burden on the applicant, it also exposes the applicant to a great deal of risk as they are forced to purchase, lease or license a parcel of land with no certainty as to a project.

Furthermore, without preliminary acceptance in the queue and further certainty as to a project’s queue position and likelihood of advancing (as determined by the respective HECO Company), developers will likely be unable to negotiate and secure debt and equity financing commitments for the project at the application stage.

In light of these considerations, the Company recommends that the “site commitment” and “evidence of financing commitment” application requirements, as reflected in Exhibit 2, and possible viability criteria requirements, be revised to differ by tier as follows:

Tier 1:

- Demonstration of site commitment through ownership, lease, license or similar right
- Evidence of 100% debt and/or equity financing commitment

Tier 2:

- Demonstration of site commitment through executed memorandum of understanding, letter of intent, term sheet, or similar documentation, with requirement of execution of lease, license or similar document within three (3) months of application acceptance
- Evidence of 100% debt and/or equity financing commitment within four (4) months of application acceptance, with a procedure to apply for a four (4) month extension

Tier 3:

- Demonstration of site commitment through executed memorandum of understanding, letter of intent, term sheet, or similar documentation, with requirement of execution of lease, license or similar document within six (6) months of application acceptance
- Evidence of 50% debt and/or financing commitment within six (6) months of acceptance of application to remain in the queue, with a procedure to apply for a three (3) month extension; and evidence of 85% debt and/or equity financing commitment within nine (9) months of acceptance of application, with a procedure to apply for a three (3) month extension

Sopogy believes the foregoing Tier 2 and Tier 3 requirement to be reasonable. Developers must identify a project site and expend the resources to negotiate the primary commercial terms for the purchase, lease or license of the site prior to submitting a project application, but need not make the further expenditures of negotiating a final form of agreement or absolutely commit to the cost and expense of the site until a spot in the queue is confirmed. Similarly, once developers secure a spot in the queue, they should then be able to attract and secure documentation evidencing partial financing commitments within a six (6) month period.

3) Project Viability Assessment.

The Proposed Q&I Procedures discuss assessment of a proposed project's viability for purposes of prioritizing projects in the queue, and note that these assessments will be conducted based upon information contained in each application. The viability assessment criteria proposed are as follows:

- are most ready to proceed;
- will not adversely impact system reliability;

- do not trigger interconnection reviews;
- applicants have ownership or control of the site on which the project is to be constructed for the term of the Schedule FIT agreement

The Proposed Q&I Procedures do not provide details regarding the method by which they will judge a project based upon these criteria. Moreover, this list is not complete with respect to Tier 3 projects, noted by the following language contained in the Proposed Q&I Procedures: “For Tier 3 projects, additional project viability criteria may also need to be assessed,” *Proposed Q&I Procedures* at 8.

While this makes it difficult to comment on the specific assessment criteria, the Company emphasizes that the method for measuring projects based upon the final criteria must be objective and predictable, with as little room for discretion as practicable. Clarity and predictability are important because developers must be aware of the metrics upon which their project(s) will be evaluated, thus enabling developers to anticipate the strengths and weakness of their project(s) and expend resources in the areas which will be of greatest concern to the HECO Companies.

In addition to the comments set forth above in the application section, the Company also suggests that the “background and experience of development partners” application requirement – along with the corresponding viability assessment criteria – be eliminated. This criteria may act as a significant “barrier to entry” with respect to newer developers, thus slowing the progress of the FiT Program by ultimately decreasing the number of applicants with potential projects. Moreover, if left as a viability assessment metric, this subjective criteria allows for too much discretion, thereby introducing too much unpredictability into the process. Safeguards still exist, as the experience and ability of a project developer will be judged by the market. Specifically, financiers’ willingness to lend and/or investors’ willingness to invest will be heavily influenced by all aspects of a project’s developer, from experience and track record to integrity and general competence. As such, these determinations should be left to the market, with a developer’s ability to demonstrate financing commitment as a more certain viability measure. Additionally, the rigorous plan review process, whereby designs, engineering plans etc. are vetted serve as an additional safeguard.

4) Appeals Process.

Even if an objective and predictable viability assessment process is encouraged and generally crafted, certain determinations will still, by nature, be case specific. The Proposed Q&I Procedures do not provide for an appeals or other determination challenge process in the event a project is deemed unviable or receives a poor viability assessment, resulting in an unfavorable queue priority. Therefore, the Company recommends that following the project viability assessment stage of the queue, an appeals process be implemented to allow project developers to challenge unfavorable assessments as determined by HECO Companies.

5) **Interconnection Studies.**

The cost and length of an interconnection study (if deemed necessary), interconnection equipment and/or certain circuit improvements benefitting one or multiple sites should be clearly defined – whether borne by the utility, the developer or shared – and if borne in full, or in part, by the developer, should be considered for purposes of developing the FiT rates.

6) **Queue Rules.**

The Proposed Q&I Procedures set forth certain rules that would be applicable to the queue, *Proposed Q&I Procedures* at 9.

a) Project Size Changes. First, while applicants may sell their projects, the “general size” of the project must remain consistent and “[a]ny deviations from the original application will be subject to elimination from the queue,” *Id.* The Company disagrees with this rule and recommends that while project size increases should not be allowed as a general matter, applicants should be allowed to decrease the size of their project for any reason, so long as the project remains within the same tier. Notwithstanding, following an interconnection study, if any, the respective HECO Company and project developers should better understand the limits of the assigned circuit and whether the size of a project is viable in the specified area. Based upon these results, project developers should be allowed to either decrease or increase their project size (maybe within a specified range, such as by no more than 25%) in order to maximize the renewable energy potential of any project site and/or preserve their project in light of the circumstances.

b) Elimination from the Queue. The queuing rules proposed by the Proposed Q&I Procedures state that “[i]n consultation with the IO, Hawaiian Electric can terminate the position of an Applicant in the queue if the Applicant fails to comply with the provisions in the Schedule FIT Agreement,” *Id.* At 10. While the Company does not disagree with this rule generally, it proposes establishment of an appeals process to allow the developer the ability to request reconsideration of the termination. Otherwise, a developer who suffers severe hardship from a potentially erroneous termination is left with little recourse.

c) Additional Rules. The proposed queuing rules also provide that “[i]n consultation with the IO, Hawaiian Electric will reserve the right to impose additional rules or procedures as necessary to ensure that the FIT program is proceeding in accordance with the Commission’s Orders,” *Id.* Again, while the Company does not disagree with this rule generally, it proposes implementation of a process whereby interested parties may comment on any additional, supplemented or amended rules before they are implemented.

7) FiT Release Schedule.

The Proposed Q&I Procedures propose an incremental release of the FiT Program, whereby all the tiers will not be released simultaneously and only portions of the tiers will be released at a time. The Company notes that the FiT Program cap set forth in the D&O, *D&O* at 52, as well as the two-year periodic examination requirement, *D&O* at 98, already provide safeguards and a process for the HECO Companies, the PUC and other stakeholders to evaluate and review the queuing and interconnection processes as well as the entire FiT Program. Moreover, the incremental release of the FiT Program does not appear consistent with the stated objective in the D&O for the FiT to “accelerate the acquisition of renewable energy”, *D&O* at 1., especially since Tier 3 of the FiT Program is proposed to be released last and Tier 3 projects will generally have the longest development cycle. In fact, if Tier 3 is not released until later in the program, as proposed by the Proposed Q&I Procedures, it is possible that no, or few, Tier 3 Projects will be commissioned by the two-year periodic examination mark. Therefore, the Company does not agree with the proposed incremental release of the FiT Program, but rather urges that all tiers of the FiT Program be released simultaneously. If, however, the Commission deems an incremental approach necessary (over and above that set forth in the D&O), the release of each tier could be simultaneous but phased over the course of the initial two-year program period allowing for evaluation of the queuing process with respect to each tier.

The Company respectfully submits the forgoing comments for the Commission’s consideration. The Company is generally supportive of the Proposed Q&I Procedures, but believes certain amendments necessary and urges the Commission to make appropriate adjustments. Furthermore, as the Proposed Q&I Procedure are not entirely inclusive of the certain Q&I forms and details, the Company encourages development of a feedback mechanism throughout the initial FiT Program period whereby interested parties may submit comments to both the Commission such that the Commission remains informed, and to the third-party observer to enable any rule or procedural based improvements that are not contrary to any Commission Order, but are rather discretionary to the HECO Companies and the third-party observer.

CERTIFICATE OF SERVICE

I hereby certify that I have on this date served a copy of Sopogy, Inc.'s Comments on Proposed Queuing and Interconnection Procedures upon the following parties, by causing a copy hereof to be hand delivered, e-mailed, or mailed, U.S. postage prepaid, and properly addressed to each such entity.

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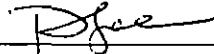
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